

TODD FREDERICK
SHARON FREDERICK

IBLA 85-349

Decided September 4, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, returning notice of location for millsite.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Millsites: Generally -- Mining Claims: Recordation

Where the notice of location for an unpatented millsite is not filed within 90 days of the date of location of the millsite, as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), the millsite is thereby rendered void and BLM may properly refuse to accept the notice for recordation.

APPEARANCES: Todd and Sharon Frederick, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Todd and Sharon Frederick have appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 10, 1984, returning the notice of location for the Old Man Quartz millsite.

On November 16, 1984, appellants filed with BLM a notice of location for the Old Man Quartz millsite, comprised of 5 acres situated in the S 1/2 SE 1/4 SE 1/4 sec. 35, T. 37 S., R. 6 W., Willamette Meridian, Josephine County, Oregon. The notice of location states that the millsite was located on October 4, 1983. In its December 1984 decision, BLM stated that it was returning appellants' notice of location because it was not filed "within 90 days after the date of location," as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), and 43 CFR 3833.1-2(a). 1/

1/ BLM also stated that appellants had failed to pay the \$ 5 recordation fee which was to accompany the notice of location, in accordance with 43 CFR 3833.1-3. Appellants in their statement of reasons assert that they paid the recordation fee. Appellants refer to a receipt (No. 1168559) with respect to

On October 4, 1983, appellants located a placer mining claim, known as the Old Man's Quartz, encompassing the S 1/2 SE 1/4 SE 1/4 of sec. 35, T. 37 S., R. 6 W. The notice of location for appellants' placer mining claim (OR MC 68623), was filed for recordation with BLM on October 6, 1983. An amended notice of location was filed for recordation with BLM on January 4, 1984. On October 1, 1984, appellants located a lode mining claim, known as the Old Man Quartz, which is also situated in the S 1/2 SE 1/4 SE 1/4 sec. 35, T. 37 S., R. 6 W., Willamette Meridian, Josephine County, Oregon. A notice of location for appellants' lode claim (OR MC 79916) was filed for recordation with BLM on October 19, 1984.

In their statement of reasons for appeal, appellants contend that they did file the notice of location for their millsite timely where they filed it within 90 days after the date of location of their lode mining claim, i.e., "Oct. 1, 1984." Appellants state that they could not file a notice of location for their millsite "until we were the owners of both the placer [and] lode claim [and] had to wait until the old owner * * * had totally abandoned [the] claim." 2/

[1] Section 314(b) of FLPMA, supra, requires the owner of an unpatented millsite located after October 21, 1976, to file with BLM "within ninety days after the date of location of such claim" a copy of the notice of location for the site. See 43 CFR 3833.1-2(a). Failure to file timely in accordance with section 314(b) of FLPMA, supra, "shall be deemed conclusively to constitute an abandonment of the * * * mill * * * site by the owner," under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982). See 43 CFR 3833.4(a). In such circumstances, the millsite is thereby rendered "void." 43 CFR 3833.4(a).

For purposes of determining compliance with section 314(b) of FLPMA, supra, the date of location is defined as the "date determined by State

fn. 1 (continued)

"Serial #OR MC 79916." That receipt, however, indicates the receipt by BLM on Nov. 16, 1984 of the \$ 5 recordation fee with respect to appellants' lode mining claim (OR MC 79916). The record also indicates that appellants paid a \$ 5 recordation fee with respect to their placer mining claim on Oct. 6, 1983. There is no evidence of receipt of a \$ 5 recordation fee with respect to appellants' millsite. The applicable regulation, 43 CFR 3833.1-3, requires that "[e]ach claim or site filed shall be accompanied by a one time nonrefundable recordation fee of \$ 5." (Emphasis added.) A location notice will be noted as being recorded on the date received if the claimant "submits the fee within 30 days from the receipt of * * * certified notification to submit the proper fee." Id. Otherwise, the recordation will "be rejected and returned to the owner." Id.; see Arthur A. Gotschall, 88 IBLA 276 (1985). BLM, however, never sent any notice to appellants to pay the required fee because the millsite could not be recorded in any event due to the late filing of the notice of location.

2/ Appellants indicate that the old owner had abandoned the claim by failing to perform or to file evidence of annual assessment work since August 1983.

law in the local jurisdiction in which the unpatented * * * mill * * * site is situated." 43 CFR 3833.0-5(h). In Oregon, that date is the date the notice of location is posted on the site. OR Rev. Stat. §§ 517.044, 517.160 (1979). The date of location of appellants' millsite claim, as stated on the notice of location of that claim, was October 4, 1983. Appellants do not dispute BLM's conclusion in its December 1984 decision, that the millsite was located on that date. They argue that the filing of the notice of location of the millsite with BLM was timely. Clearly it was not. To be considered timely filed, the notice of location of the millsite would have to have been filed by January 2, 1984. It was not filed until over 10 months later on November 16, 1984. Regardless of the reason for appellants' decision to delay the filing of the notice of location for their millsite, the millsite must be deemed abandoned and void because the notice of location was not filed within the statutory time. Fletcher D. Fisher, 59 IBLA 150 (1981).

After appellants located their placer mining claim on October 4, 1983, they were entitled to file a millsite as the "proprietor[s] of a * * * placer claim." 3/ OR. Rev. Stat. § 517.160(1) (1979); see also 30 U.S.C. § 42(b) (1982). The millsite was located on that same date, so appellants were required to comply with the filing requirement of section 314(b) of FLPMA, supra. At the time of location of their millsite, appellants were asserting independent ownership of the site. To protect their interest they were required to then assume the responsibilities for compliance with section 314(b) of FLPMA, supra, or suffer the statutory consequences of failure to comply.

Moreover, we have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior, or his delegated representatives, with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Section 314 of FLPMA, 43 U.S.C. § 1744 (1982), was also recently found by the Supreme Court to be constitutional, within the affirmative powers of Congress and not violative of a claimant's due process rights. United States v. Locke, 105 S. Ct. 1785 (1985).

Accordingly, we conclude that BLM properly returned the notice of location for appellants' millsite where the millsite was void as a matter of law for failure to comply with section 314(b) of FLPMA, supra. R. Wade Holder, 35 IBLA 169 (1978); cf. John J. Schnabel, 90 IBLA 147 (1985).

3/ However, to the extent of the overlap between appellants' placer mining claim and millsite, the claim and the site were adverse locations because a placer, as well as a lode, claim asserts that there has been the discovery of a valuable mineral deposit while a millsite asserts that the land is nonmineral. United States v. Haskins, 59 IBLA 1, 93, 88 I.D. 925, 971 (1981), aff'd, Haskins v. Clark, Civ. No. 82-2112 LBM (JRX) (C.D. Cal. Oct. 30, 1984). Moreover, by later locating a lode mining claim on the same land as the millsite, appellants "thereby admitted that the millsite was void from its inception" as to that land. United States v. Moorhead, 59 I.D. 192, 198 (1946).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

